

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

v.

No. 96-7309

DON RICO MADDOX,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of West Virginia, at Huntington.
Robert J. Staker, Senior District Judge.
(CR-94-21, CA-95-1137-3)

Submitted: March 31, 1997

Decided: April 22, 1997

Before ERVIN and MOTZ, Circuit Judges, and
PHILLIPS, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

COUNSEL

Don Rico Maddox, Appellant Pro Se. Paul Thomas Farrell, Assistant
United States Attorney, Huntington, West Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Don Maddox seeks to appeal the district court's order and order on reconsideration denying his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1997). Maddox's case was referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(B) (1994). The magistrate judge recommended that relief be denied and advised Maddox that failure to file timely objections to this recommendation could waive appellate review of a district court order based upon the recommendation. Despite this warning, Maddox failed to object to the magistrate judge's recommendation.

The timely filing of objections to a magistrate judge's recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned that failure to object will waive appellate review. Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985). See generally Thomas v. Arn, 474 U.S. 140 (1985). Maddox has waived appellate review of the district court's underlying order denying his § 2255 motion by failing to file objections after receiving proper notice. Moreover, we find that the district court did not abuse its discretion by denying Maddox's motion for reconsideration, see Temkin v. Frederick County Comm'rs, 945 F.2d 716, 724 (4th Cir. 1991), because the motion did not even address Maddox's failure to timely raise objections, which was the basis for the district court's denial of relief.

We accordingly deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED